APPENDIX D

SUPREME COURT OF NEBRASKA.

JANUARY TERM, A. D. 1954.

June 25.

No. 33546.

GEORGE H. BRASIER, APPELLANT,

V.

CITY OF LINCOLN, NEBRASKA, ET AL., APPELLEES.

APPEAL FROM THE DISTRICT COURT OF LANCASTER COUNTY.

This cause coming on to be heard upon appeal from the district court of Lancaster county, was argued by counsel and submitted to the court; upon due consideration whereof, the court finds no error apparent in the record of the proceedings and judgment of said district court. It is, therefore, considered, ordered and adjudged that said judgment of the district court be, and hereby is, affirmed; that appellees recover of and from appellant their costs herein expended, taxed at $_____; for all of which execution is hereby awarded, and that a mandate issue accordingly.

Robert G. Simmons
Chief Justice.

Supreme Court)
) ss.
State of Nebraska)

I, George H. Turner, Clerk of the Supreme Court
the State of Nebraska, do certify that I have co
pared the foregoing copy of Judgment, in the case
Brasier vs. City of Lincoln, No. 33546, with the origi
now on file in my office, and that the same is a corr
transcript thereof, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto
my hand and caused to be affixed the Seal of
Court, at the City of Lincoln, this 20th day of Dec
ber, 1954.

(Seal) signed/ Geo. H. Turner, Cle

COPY BOUND

PETITION

FOR

REHEARING

In The

Supreme Court of the United States

October Term, 1954

No. 471

GEORGE H. BRASIER, PETITIONER,

V.

CITY OF LINCOLN, NEBRASKA; Mayor Clark Jeary, C. W. D. Kinsey, Rees Wilkinson, Joe E. Fenton, Hugh Thorne, Fern Orme, Pat Ash, as members of and constituting the City Council of the City of Lincoln, Nebraska, RESPONDENTS.

PETITION FOR REHEARING ON APPLICATION FOR WRIT OF CERTIORARI.

The petitioner respectfully submits the court's decision to deny the writ of certiorari herein prayed is erroneous and improvident. A mistake by this court must be due to failure of counsel in presentation.

The most probable failure of counsel perhaps consisted in failure to clearly show that the petitioner, George H. Brasier, a citizen of the State of Oklahoma, obtained an irrevocable grant under Ordinance No. 5337 based upon a consideration furnished by him making same a contract not to be impaired or abridged.

He acted upon this ordinance by improvements on his property upon the faith of the ordinance. Further acting on the faith of the ordinance - grant - contract he furnished further consideration by obligating his property for paving which imposed a liability on his premises and would be valuable if under benefit of Ordinance No. 5337, otherwise worthless.

The relief sought is upon the direct authority of the cases hereto cited:

The Impairment of the Obligation of Contract:

Atlantic Coast Line R. Co. v. *Goldsborough*, 232 U. S. 548.

Bacon v. *Texas*, 163 U. S. 207.

Baltimore Trust & Guarantee Co. v. *City of Baltimore*, 64 Fed. 153.

Cuyahoga River Power Co. v. *Akron*, 240 U. S. 462.

Dartmouth College v. *Woodward*, 4 Wheat. 518, 17 U. S. 518.

Fletcher v. *Peck*, 6 Cranch 87, 3 L. Ed. 162.

Mercantile Trust & D. Co. v. *Columbus*, 203 U. S. 381.

Meriweather v. *Garrett*, 102 U. S. 472.

Murray v. *Charleston*, 96 U. S. 432.

New Orleans Waterworks Co. v. *Rivers*, 115 U. S. 674.

New Orleans Waterworks Co. v. *Louisiana*, 185 U. S. 336.

New Orleans Waterworks Co. v. *Louisiana Sugar Ref. Co.*, 125 U. S. 18.

Pacific Electric R. Co. v. *Los Angeles*, 194 U. S. 112.

St. Paul Gaslight Co. v. *St. Paul*, 181 U. S. 142.

United States v. *New Orleans*, 98 U. S. 381.
Vicksburg v. *Vicksburg Waterworks Co.*, 202 U. S. 453.
Vicksburg Waterworks Co. v. *Vicksburg*, 185 U. S. 65.
Walla Walla v. *Walla Walla Water Co.*, 172 U. S. 1.

Statutes as Contracts:

Carondelete Canal & Nav. Co. v. *Louisiana*, 233 U. S. 362.
Fletcher v. *Peck*, 6 Cranch 87, 3 L. Ed. 162.
New Jersey v. *Yard*, 95 U. S. 104, 114.

Mandamus:

Marbury v. *Madison*, 1 Cranch 137, 2 L. Ed. 60.

We have discovered no cases in derogation of these cases, nor have any such cases been suggested by counsel for respondents. Perhaps the failure of counsel for respondents to reply formed a handicap. These cases cited, in principle establish a definite property right in the petitioner, which has been invaded and destroyed by respondents in plain violation of constitional rights and immunities guaranteed by either Section 10, Article 1 or Section 1 of the Fourteenth Amendment of the Constitution of the United States.

Wherefore, petitioner prays the writ of certiorari herein applied for and requested may be allowed or in the alternative grant leave to make a direct appeal to this Honorable Court in the interest of natural justice.

Respectfully submitted,

HERBERT W. BAIRD,
Attorney for Petitioner.

CERTIFICATE.

Herbert W. Baird, attorney for petitioner, hereby certifies the above is restricted to Rule 58 of the Revised Rules of this Court and is for the purpose of obtaining justice and not for the purpose of delay.

HERBERT W. BAIRD,
138 North 12th Street,
Lincoln 8, Nebraska,
Attorney for Petitioner.